

United Ceiling & Wall, Inc. and Local 67, Operative Plasterers' and Cement Masons International Association in the Detroit Area. Cases 7-CA-31912, 7-CA-32111, and 7-CA-33163

November 12, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon charges filed by the Union on May 22 and July 23, 1991, and April 16, 1992, the General Counsel of the National Labor Relations Board issued an order consolidating cases, consolidated complaint and notice of hearing against United Ceiling & Wall, Inc., the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On October 13, 1992, the General Counsel filed a Motion for Default Judgment. On October 15, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The consolidated complaint states that unless an answer is filed within 14 days of service, "all the allegations in the consolidated complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Default Judgment disclose that by letter dated June 23, 1992, the Regional attorney notified the Respondent that unless an answer was received by July 7, 1992, a Motion for Default Judgment would be filed. To date, no answer has been filed by the Respondent.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a Michigan corporation with an office and place of business in Sterling Heights, Michigan, where it has been engaged in the construction business as a plastering, carpentry, and drywall contractor. During the calendar year ending December 31, 1991, a representative period, the Respondent's gross revenues exceeded \$500,000 and, during the same period, it purchased and caused to be shipped directly to its Sterling Heights, Michigan facility goods and supplies valued in excess of \$50,000 from suppliers located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On or about June 1, 1989, the Respondent entered into an agreement with the Union agreeing to be bound by all provisions contained in or pertaining to an existing collective-bargaining agreement between the Union and the Detroit Association of Wall and Ceiling Contractors, an employer association, which was effective by its terms from June 1, 1989, to May 31, 1991, and which contained an automatic renewal clause. As no notice to terminate was given by either party as required by the contract, the parties' agreement was automatically renewed for the period ending May 31, 1992.

At all material times, the Union, by virtue of Section 8(f) of the Act, has been the designated limited exclusive bargaining representative of the Respondent's employees in an appropriate unit, and has been recognized as such by the Respondent in its agreement with the Union, the most recent of which, as noted, was automatically renewed to May 31, 1992. The appropriate bargaining unit consists of:

All full-time and regular part-time journeymen and apprentice plasterers employed by the Respondent out of its Sterling Heights place of business; but excluding office clerical employees, guards and supervisors as defined in the Act.

Article II, section 1, of the parties' current agreement provides for a wage rate which includes 38 cents per hour for union dues, and article II, section 5, provides for vacation and holiday pay. Article V of the agreement provides for insurance and pension benefits, and section 5 of article V requires the filing of monthly fringe benefit reports which the Respondent, in the past, has complied with.

The Respondent, however, has failed and refused, since March 1991, to make fringe benefit contributions to the Pension and Health Insurance Fund, has failed and refused since June 1991 to remit the sum of \$1.50 per hour withheld from employees' hourly base wages to the Vacation Fund, has failed and refused since June or July 1991 to file fringe benefit reports, and has failed and refused since July 1991 to remit to the Union dues withheld from employees' base wages, as required by articles II and V of the parties' agreement. The above-described matters relate to wages, hours, and other terms and conditions of employment and are mandatory subjects of bargaining. By engaging in such conduct without first notifying the Union or affording it an opportunity to bargain, the Respondent has failed and refused to bargain collectively with the Union within the meaning of Section 8(d) of the Act, and has violated Section 8(a)(5) and (1) of the Act, as alleged.

CONCLUSION OF LAW

By failing and refusing to make fringe benefit contributions to the Pension and Health Insurance Fund, failing and refusing to remit the sum of \$1.50 per hour withheld from employees' hourly base wages to the Vacation Fund, failing and refusing to file fringe benefit reports, and failing and refusing to remit to the Union dues withheld from employees' base wages, as required by articles II and V of its collective-bargaining agreement with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be required to make the fringe benefit contributions to the Pension and Health Insurance Fund that it has not made since March 1991, and to remit to the Vacation Fund the sum of \$1.50 per hour withheld from employees' hourly base wages that have not been remitted since June 1991.¹ The Respondent will also be required to remit to the Union the dues that were withheld from employees' base wages and which have not been forwarded since about July 1991, with interest on such amounts to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and to file the fringe benefit reports that have not been filed since June or July 1991. Finally, the Respondent shall be ordered to make unit employees whole for any expenses

they may have incurred as a result of the Respondent's failure to make the above payments and contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest thereon to be computed in accordance with *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, United Ceiling & Wall, Inc., Sterling Heights, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Local 67, Operative Plasterers' and Cement Masons International Association in the Detroit Area, which is the designated limited exclusive collective-bargaining representative of the Respondent's employees in an appropriate bargaining unit, by failing and refusing, without prior notice to or bargaining with the Union, to make fringe benefit contributions to the Pension and Health Insurance Fund, failing and refusing to remit the sum of \$1.50 per hour withheld from employees' hourly base wages to the Vacation Fund, failing and refusing to file fringe benefit reports, and failing and refusing to remit to the Union dues withheld from employees' base wages, as required by articles II and V of the parties' collective-bargaining agreement. The appropriate bargaining unit consists of:

All full-time and regular part-time journeymen and apprentice plasterers employed by the Respondent out of its Sterling Heights place of business; but excluding office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the fringe benefit contributions to the Pension and Health Insurance Fund that have not been made since March 1991, remit the sum of \$1.50 per hour withheld from employees' hourly base wages to the Vacation Fund that have not been remitted since June 1991, file the fringe benefit reports that have not been filed since June or July 1991, and remit to the Union the dues that were withheld from employees' base wages that have not been forwarded since July 1991, with interest as set forth in the remedy section of this Decision and Order.

(b) Make whole unit employees for any expenses they may have incurred because of the Respondent's failure and refusal to make the above payments or contributions, with interest as set forth in the remedy section of this Decision and Order.

¹ Any additional amounts applicable to these payments shall be computed in the manner prescribed in *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time-cards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facility in Sterling Heights, Michigan, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Local 67, Operative Plasterers' and Cement Masons International Association in the Detroit Area, which is

the designated limited exclusive collective-bargaining representative of our employees in an appropriate unit, by failing and refusing, without prior notice to or bargaining with the Union, to make fringe benefit fund contributions to the Pension and Health Insurance Fund, failing and refusing to remit the sum of \$1.50 per hour withheld from employees' hourly base wages to the Vacation Fund, failing and refusing to file fringe benefit reports, and failing and refusing to remit to the Union dues withheld from employees' base wages, that were required by articles II and V of the parties' collective-bargaining agreement. The appropriate bargaining unit consists of:

All full-time and regular part-time journeymen and apprentice plasterers employed by the Respondent out of its Sterling Heights place of business; but excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make all fringe benefit contributions to the Pension and Health Insurance Fund, that have not been made since March 1991, WE WILL remit the sum of \$1.50 per hour withheld from employees' hourly base wages to the Vacation Fund that have not been remitted since June 1991, WE WILL file the fringe benefit reports that have not been filed since June or July 1991, and WE WILL remit to the Union the dues that were withheld from employees' base wages but not forwarded since July 1991, with interest.

WE WILL make unit employees whole for any expenses they may have incurred because of our failure and refusal to make the above payments and contributions, with interest.

UNITED CEILING & WALL, INC.